

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARLAL HARJIVANDAS SONI

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKER FOR MR NAVIN K PAHWA for Petitioners
MR DN PATEL ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/07/1999

ORAL JUDGEMENT

#. Heard Mr.Thakkar, learned counsel for the
petitioner and Mr.D.N.Patel, learned APP for the
respondent - State.

#. Rule. Mr.D.N. Patel, learned APP waives service of
rule on behalf of the respondent State.

#. The petitioner herein challenges the framing of

charge against him by the learned Sessions Judge in Sessions Case No : 7/ 96 vide Exh.170 on 12th April, 1999.

#. Mr.Thakkar, learned counsel for the petitioner states that the learned Sessions Judge has not taken into consideration the fact that there is no chargesheet against the present petitioners. In fact, the report under Section 169 of Cr.P.C. came to be submitted after the investigation and the said report has become final and has not been challenged either by the State or by the original complainant. It is also submitted that the original complainant for the reasons best known, wanted these two petitioners to be brought in as accused. For that purpose earlier the framing of charge was challenged before the High Court and the High Court had issued certain directions to the Sessions Court to be followed while framing the charge. In another Special Criminal Application, High Court had given direction to consider while framing charge, if there is any material following the investigation by CID Crime which can form the support to the prosecution case, if at all it can and thereafter to frame the charge. A direction was given to take into consideration any such report, if any, tendered by CID Crime. These aspects have overlooked by the learned Sessions Judge while framing the charge and hence this petition.

#. Mr.D.N.Patel, learned APP during the course of arguments has drawn attention of this Court to the fact that the matter is being delayed by challenging one order or the other again and again and the real issue is tried to be sidetracked. According to him, consistently the case of the prosecution has been that the CID crime has not made any report under Section 173 of Cr.P.C. and it can never form basis for the prosecution case at the trial. This is unequivocally stated by the Special Prosecutor before the trial court as well as before this Court on affidavit in earlier Special Criminal Application. Despite this, learned Sessions Judge has framed charge against the petitioner which is erroneous and therefore, Mr.Patel also seeks indulgence of this Court on behalf of the State.

#. Before proceeding to consider the merits, certain material facts may be taken on record. Two incidents took place on 1st December, 1992 at two different places relatively in near vicinity, both of the place and the time. For these two different chargesheet came to be filed on basis of the investigation carried out by the investigating agency. As a result of the investigation,

for the incident wherein the present petitioners were sought to be implicated, the investigating agency on the basis of the material collected, made a report under Section 169 of the Cr.P.C. and sought 'A' summary. Thereafter, the original complainant tried to bring the present petitioners on record as accused by making various applications including Special Criminal Application before the High Court wherein he could not succeed. Subsequent thereto an application was made before the learned JMFC, Sami Harij, upon which the learned JMFC has passed order and directed a fresh investigation by CID crime, overlooking the fact that the chargesheet was already filed against some of the accused persons and for the present petitioners, report under Section 169 of Cr.P.C. was lodged. On the basis of that direction, CID Crime seems to have made some investigation. Thereafter, the matter does not seem to have made any progress and no report either under Section 169 or under Section 173 of Cr.P.C. is filed against the present petitioners. Despite that on an application preferred by the original accused, order came to be passed by the learned Additional Sessions Judge, Mehsana camping at Patan (since the case was transferred to Mehsana District) by order dated 16-5-1995 below Exh.31 in the said Sessions Case to join the present petitioners as accused persons and thereafter, the charge is framed vide Exh.170 on 12th April, 1999 by Sessions Judge, Banaskantha at Palanpur (as the case is again transferred to Banaskantha), which is a matter of challenge before this Court. In light of the fact that no chargesheet is filed against the present petitioners, that there is no material against them to prosecute the trial and that, there is no material against the petitioners to frame charge against them. It may be noted that the CID Crime has not made any report under Section 173 of Cr.P.C. and if that be so, no prosecution can follow. Another aspect which requires consideration, is that the investigating agency has filed a report under Section 169 after due investigation which has become final. If these two aspects are taken into consideration, the charge cannot be framed against the present petitioners.

#. For a Sessions triable case unless the investigating agency files a report under Section 173 of Cr.P.C. before the Magistrate and unless the Magistrate commits the case to Court of Sessions, the Court cannot proceed against the accused on the basis of some stray papers which don't form part of the investigation papers, particularly when the prosecution categorically states that they don't rely on the investigation made by the CID Crime pursuant to the order of the learned JMFC, Sami

#. In light of the above, the petition merits allowance and therefore the same is allowed. The charge framed by the Sessions Judge, Palanpur vide Exh.170 impugned in this petition is set aside. The learned Sessions Judge shall proceed with the framing of charge afresh on the basis of the material produced before him at the time of committal of the matter and relied upon by the prosecution. Since the matter is quite old and after almost 78 months of the incident is stumbling at the stage of framing of charge, it would be appropriate to direct the trial Court to proceed with the trial as expeditiously as possible. Rule is made absolute.

Date : 6-7-1999 [A.L.Dave, J.]

*kailash